Robin J. Vos

State Representative • 63rd Assembly District • Racine County

Senate Bill 458 ~ Removal of certain records from CCAP
Senate Committee on Public Health, Senior Issues, Long Term Care and Privacy
State Representative Robin Vos

Dear Chairman Carpenter and members of the committee:

Thank you for holding a hearing today on Senate Bill 458 relating to the removal of certain cases off the consolidated court automated internet web site (CCAP). This legislation is in response to certain constituent and other citizen contacts as well as a follow-up to the Legislative Council Study Committee on Expunction of Criminal Records that I chaired in the summer of 2006.

During my work with the committee, a resounding concern was that individuals whose cases were dismissed or individuals who were found not guilty of a charge still had their case listed on CCAP. While they were essentially cleared of all the charges, the public's ability to view this information was causing discrimination and stereotyping that affected these individuals ability to function in society. Thus Senator Lassa and I have introduced companion legislation (SB 458 and AB 754) that addresses the problem by removing cases from CCAP that have been cleared after a certain period of time.

Specifically, SB 458 does the following:

1. Remove a case or charge involving a civil forfeiture or misdemeanor from CCAP within ***90 days*** after being notified that:
    - The case or charge has been dismissed.
    - The defendant has been found not guilty of all of the charges.
    - The case or charge has been overturned on appeal and dismissed.

2. Remove a case or charge involving a felony from CCAP within ***120 days*** after being notified that:
    - The case or charge has been dismissed.
    - The defendant has been found not guilty of all of the charges.
    - The case or charge has been overturned on appeal and dismissed.

In speaking with the Director of the State Courts office, it is my understanding that this legislation would affect 40,000 cases annually; however this is a very rough approximation. Also, please note that this legislation would only affect cases on CCAP and not the courts case management system viewable by court and judicial personnel. I also understand that the Director of State Courts has various concerns with this legislation such as implementing the program change. I will be happy to work with him and his office to address these issues.

In a society today where personal information can be accessed easily by a few clicks of a button, it is important that we find ways to safeguard people's lives and allow them to be productive members of society. It simply isn't fair that someone who is declared innocent to have a guilty charge held against them their whole life.

Thank you again for your consideration of Senate Bill 458.

Wisconsin State Senate
24th Senate District

Serving Wood, Portage, Adams
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JULIE LASSA
STATE SENATOR

Senate Bill 458 Testimony
Senate Committee on Public Health, Senior Issues, Long Term Care, and Privacy
Room 330 SW
11:00 a.m.

Chairman Carpenter and Committee Members,

Thank you for the opportunity to provide testimony today on Senate Bill 458. I also want to thank Representative Vos, who authored the Assembly companion bill, for his work on this legislation with me.

I was prompted to pursue this legislation after hearing from my constituent, Rex Oelhoff, who is here today. He'll tell you about his experiences in detail a moment or two, but I would like to summarize the ordeal that he went through and that he continues to go through.

Several years ago, Rex was falsely accused of sexual abuse of a child, a very serious crime. After a thorough investigation by the District Attorney's office, however, it was concluded that the allegations had no basis and the charges were dismissed without prejudice. Unfortunately, he has faced discrimination and hardship ever since then because of his CCAP entry. Rex went through the necessary steps to get his federal record expunged and was successful. His county record still remains though. He doesn't have the financial means to file a civil suit for restitution, so he continues on every day, unable to change his situation.

For Rex and others who have gone through similar circumstances, who face distrust and discrimination on a daily basis, a presumption of innocence is far from reality.

As all of us in this room know, CCAP is technically a record of court proceedings. We generally assume that these records will not be used in illegal ways. What we hear in these stories, though, is that a presumption of innocence for these individual is simply not the case. Even with a disclaimer included on the front page of the CCAP website, these individuals face distrust and even discrimination in employment, in loan applications, even in relationships. They face this despite being innocent.

Since Representative Vos and I introduced this legislation last month, we have received many calls and emails from Wisconsin citizens who are in the same boat as my constituent. Their reasons for having CCAP entries are varied – some have been falsely

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accused of crimes, others have gone to trial to clear their name and been found not guilty. Their experiences because of having a CCAP entry, though, are largely the same.

I want to be clear that the aim of this bill is not, as some have argued, to protect the guilty. In fact, it is quite the opposite. The goal behind this legislation is to protect people like my constituent Rex Oelhoff, people who have been proven not guilty and who should not face illegal discrimination.

Thank you for your time and consideration of this legislation. I'd be happy to answer any questions that you might have.

Supreme Court of Wisconsin

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A. John Voelker
Director of State Courts

Testimony
Of
A. John Voelker
Director of State Courts

in Opposition to

Senate Bill 458
Restricting Internet Access to Certain Court Records

Senate Committee on Public Health, Senior Issues, Long Term Care and Privacy
Senator Tim Carpenter, Chair
February 20, 2008

Thank you, Chairman Carpenter and members of the Committee. I am John Voelker, the Director of State Courts. I am appearing on behalf of the Legislative Committee of the Wisconsin Judicial Conference to express its opposition to Senate Bill 458, which would direct my office to restrict Internet access to certain court records. The Wisconsin Judicial Conference is composed of all appellate and circuit court judges in Wisconsin. The Legislative Committee urges your committee to reject this bill.

There are a number of practical concerns I want to raise about SB 458 but first I would like the committee to understand the policy that underlies our commitment to maintaining an open and accessible court system. Nearly 30 years ago, the Wisconsin Supreme Court addressed whether dismissed cases should remain open records. In the case of *Newspapers, Inc. v, Breier*, 89 Wis.2d 417, 436-37 (1979), the Court said:

> The power to arrest is one of the most awesome weapons in the arsenal of the state. It is an awesome weapon for the protection of the people, but it is also a power that may be abused. In every case, the fact of an arrest and the charge upon which the arrest is made is a matter of legitimate public interest. The power of arrest may be abused by taking persons into custody on trivial charges when charges of greater magnitude would be appropriate. The power of arrest may be abused by overcharging for the purpose of harassing individuals and with the expectation and intent that the initial charge will be dismissed or substantially reduced. In any event, curbing abuse of the arrest power is only possible if the public can learn how that power is exercised.

SB 458 would require my office to remove from the Wisconsin Circuit Court Access (WCCA) Internet website records from cases involving a civil forfeiture, misdemeanor or felony in which one of the following applies:

(a) "cases or charges" have been dismissed;
(b) a person was found not guilty "of all of the charges;" or
(c) a "case or charge has been overturned on appeal and dismissed."

As I mentioned, we have several practical concerns about how SB 458 would be implemented.

First, I do not believe SB 458 will achieve the results desired by the authors. Proponents of changing the WCCA Internet website most often cite problems defendants have with potential employers and landlords. Yet, this information will be available for up to 90 or 120 days before being removed from public access. During that time, the information would be available for all, including those who are willing to procure, archive and later make those records available. Before the WCCA website was available, companies created databases of relevant court record information, if there was a profit to be made by their retention and sale. I believe information will still be available, but it will be under the control of private companies rather than the court system.

The WCCA Oversight Committee I created assessed the availability of data on the Internet. It discussed this issue at length and recommended not to remove dismissed cases but rather to examine the expunction statute. One of the recommendations of the WCCA Oversight Committee was to suggest a Legislative Council study of the current expunction statute, s. 973.015, Wis. Stats. There was a study committee in 2006, but that committee was unable to agree on suggested changes to the statute.

Second, all court records would continue to be maintained by our case management system, the Consolidated Court Automation Programs (CCAP). The CCAP case management system is the lifeblood of the work of the circuit courts. The data will still be on our central repository, as we need all the data for statistics, for data requests, etc.

SB 458 would require us to re-program CCAP to hide the information from the WCCA Internet website. As we continue to hide more information from Internet access, the searches are going to take longer and longer. Each query will need to parse through all of the data it should hide from a search before it can display the results. As these cases will be around for 20 to 75 years there will undoubtedly be a lot of cases or charges that need to be kept but hidden.

Third, the language of the bill that refers to "cases or charges" is very problematic. Charging practices are not uniform throughout the state. A case filed against a defendant sometimes involves multiple counts or charges. Or multiple counts or charges can be filed as more than one case.

Very often in plea bargains, some charges are dismissed and read-in at sentencing. That means the charges are dismissed but the judge can take them into account for purposes of sentencing. The bill does not differentiate dismissed from dismissed and read-in. Hiding these cases or charges will make other sentences seem too severe in the associated case or charge in comparison to other similar cases that do not include dismissed and read-in cases or charges as part of their sentence.

Fourth, the public will be able to determine when a charge is missing. Each charge is numbered. So, if count 1 was guilty, count 2 was dismissed and count 3 was guilty, the counts that displayed would be 1 and 3. It would be obvious there was more charges.

Fifth, the sentencing screen or court record screen on a case where the defendant was found guilty or pled guilty could very easily display information that refers to a count that is no longer viewable. Sometimes a dismissed case or read-in charge is referred to right in the text on the court record. Even if we did hide the charge, someone can still discover that the defendant had 2 charges against him or her at one point. This will be the case for most counties as the clerks use in-court processing to take their on-line minutes. Milwaukee County has been doing this since 1998.

To try to remove all references to dismissed charges within a case will be impossible to do electronically from CCAP. It would require manual review and modifying of the official court record by the clerks of court for literally hundreds of thousands of cases.

Finally, we are greatly concerned about the cost to CCAP of changing the website. SB 458 does not provide any resources for the court system to perform the computer reprogramming that will be necessary, nor does it provide any lead time for us to perform this work. Our preliminary estimate of the reprogramming costs is approximately $20,000. If enacted, SB 458 will require us to defer other work presently being done.

For these reasons, we urge you to reject SB 458. I would be happy to answer any questions you may have. Thank you.

February 20, 2008

Sandee Stadler
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Assembly Bill 754
Public Hearing
Committee on Corrections and Courts
Wednesday, February 13, 2008
9:00 a.m.
415 Northwest
State Capitol

Senate Bill 458
Public Hearing
Committee on Public Health, Senior Issues, Long Term Care and Privacy
Wednesday, February 20, 2008
11:00 a.m.
330 Southwest
State Capitol

Please allow this correspondence to serve as a written testimony in lieu of my personal appearance at this morning's hearing regarding Assembly Bill 754 and its companion bill SB 458.

I, hereby, with this written testimony, support the above-referenced Assembly Bill 754 and companion bill SB458. A great majority of us acknowledge the flaws and inconsistencies of our current Consolidated Court Automated Program (CCAP) and how CCAP, in its magnitude, can be used as a legal weapon and how it can damage a person's (oftentimes an innocent person's) reputation and employability. AB 754 and SB 458 would help to rectify and offer some justice, legal and personal relief to those whose reputations and employability have been adversely affected by the existence of an entry so easily accessible to all – an entry oftentimes unsubstantiated and dismissed.

I have been affected adversely by the CCAP system which obviously has little oversight in what is entered and which all too often contains several errors. As an example of its destructive power, CCAP was used as a legal and personal weapon against me as a retaliatory action.

I had filed complaints against my former employer including a complaint with the ERD. As a retaliatory action, I was discharged by my employer. On the scheduled day to retrieve my belongings, I was given some of my work-product. In discovery with the ERD, my former employer submitted to me and the ERD, several documents, including unredacted and partially redacted documents, which I also attempted to submit.

To keep me from further using my documentation/work-product/evidence, my former employer filed a temporary restraining order and a civil suit for violation of a trade secret.

Although no trade secret was violated and there was no substantiation, no imminent threat, the judge, nonetheless, granted the TRO. Everything was eventually dismissed yet this CCAP entry which contains, as acknowledged by many, a highly unusual amount of information including damaging accusations including allegations of theft. This CCAP entry still exists in its entirety today. I have tried to a certain extent to have the entry modified, but there doesn't really exist any easy way to make changes, even simple ones like the fact that I am listed as an attorney in CCAP (which I am not). I know this CCAP entry has greatly adversely affected my employability.

AB754 and SB458 would help individuals in similar situations. We all know anyone can file just about anything against anyone and it will show up in CCAP. Whether this person is innocent or guilty, anyone who reads a derogatory entry, despite the "disclaimer", will oftentimes have a lingering, negative, suspicious first impression – unjustly.

Anyone who has committed a crime should be held accountable. The public should know about any threat to public safety. I have a great respect for open records laws however, as we all know, CCAP encompasses a whole different dimension than just going to the court house to review an open record. I have, however, even a greater respect for justice. It is simply unjust that that innocent individuals should be punished by such a flawed program. It is unjust because if an atty. knows a judge well, just about anything can be entered in CCAP. It is unjust that if a case has been dismissed, unsubstantiated, overturned that it remains in the CCAP for the entire world to see and judge and discriminate. In CCAP, is one innocent until proven guilty?? Guilty until proven innocent?? In CCAP, an individual is not quite either at the moment, esp. with allegations and charges that linger on long after a dismissal, etc.

With the aforementioned flaws of our CCAP program, at least after a designated time period, preferably less than the proposed 90 or 120 days maximum, AB754 and SB458 will offer some justice and legal and / or personal relief. It is a great bill. I encourage legislators to support this bill and constituents to contact their legislators to support it.

Lastly, I want to thank Ms. Connie Schulze of Sen. Alberta Darling's office for all her assistance and support.

Thank you.

Yours truly,

Sandee Stadler

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TO: Senate Committee on Public Health, Senior Issues, Long Term Care and Privacy

FROM: Bob Andersen

RE: Senate Bill 458, Relating to Access to the Consolidated Court Automated Internet Web Site

DATE: February 20, 2008

Legal Action of Wisconsin, Inc. (LAW) is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide civil legal services for low income people in 39 counties in Wisconsin – across a territory that extends from the very populous southeastern corner of the state up through Brown County in the east and La Crosse County in the west. One of the projects of Legal Action of Wisconsin is the Legal Intervention for Employment (LIFE) project, through which we represent low income people in removing barriers to their employment.

One of the greatest barriers to employment is the existence of criminal and municipal ordinance violation records. It is because of this concern that the legislature enacted section 111.321 of the statutes, which prohibits discrimination in employment based on conviction record, unless the circumstances of the offense substantially relate to the circumstances of the job. Discrimination based on arrest record is completely prohibited, unless it involves a pending charge, where the circumstances of the arrest substantially relate to the circumstances of the job.

There has been much debate over this law over the past several years, during which time there have been several attempts to allow employers to discriminate against persons with felony records, regardless of whether the circumstances of the criminal conviction relate to the circumstances of the job.

The existence of CCAP has overshadowed the debate that has taken place over this law the past several years. The existence of this new system underscores the reality that employers can easily discriminate against current and prospective employees, notwithstanding the prohibition against discrimination, because they can simply find out about these records and refuse to hire or fire employees without giving any reason or without identifying the real reason for their actions.

Proponents of CCAP defend this new system on grounds that the public has a right to know about these criminal records. Our response has been that the public has always had the right to obtain a copy of these records from the local courthouse. The question raised by CCAP is instead whether the public has a right to have these records posted on the internet. CCAP's proponents

say that (1) section 19.31 of the statutes (part of the Open Records Law) guarantees the public the best available access to records and (2) private enterprises will simply purchase the records and make them available to the public (to employers and landlords, for example) anyway.

Section 19.31 provides that "all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them." Our response has been that section 19.31 was enacted in response to concerns about the legislative and executive branches, rather than the judicial. Hence the reference in the statute to ***officers and employees who represent them***. In any event this statement is far too vague to say that it guarantees a right to the public to have the details of all judicial cases posted on the internet. ***Moreover, the 1,000,000 hits per day are not happening because people want to find out about what their court systems are doing. The people contacting the web site could care less about what the courts are doing. They are contacting the web site to find out what their neighbors are doing, or their prospective employees or prospective tenants, or the boy friends of their daughters.*** As for the second contention, the law does not guarantee private enterprises the right to purchase these records, nor does it obligate the court system to sell them.

While we would favor even more restrictive legislation that generally limits internet access to CCAP records to law enforcement, at a minimum we applaud the proposal of this bill to require the removal of records from CCAP where criminal or ordinance violation cases or charges have been dismissed, the defendant has been found not guilty of all charges, or the case or charge has been overturned on appeal and dismissed.

I. Director of State Courts Asked the CCAP Oversight Committee to Consider Whether Some Information Should be Removed from the Data Base.

In his remarks to the Legislative Council Committee on Expunction of Criminal Records, the Director of State Courts, John Voelker, told the committee about how much CCAP had grown since its inception and that now it was used by employers, landlords, parents tracking their daughters' boyfriends, and even nosey neighbors. Remarkably, he said that there are 1,000,000 hits per day on CCAP. He said he asked the WCCA oversight committee to consider [1] whether CCAP information should be continued (because of its profound effect on employment, housing, "nosey neighbors," etc.); [2] whether information could be made to be more accurate (again with the same considerations in mind); and [3] whether new mechanism should be created to allow information to be ***removed*** from the data base.

The CCAP oversight committee decided not to provide for the immediate removal of records under some circumstances, like those addressed by this bill.

II. There is a Discrepancy Between this Data Base and the Other Data Base that Applies to Criminal Records – the Crime Intervention Bureau – Which Requires that Records be Removed from that Data Base When Charges are Dropped

Mike Roberts, Administrator, Division of Law Enforcement Services, Wisconsin Department of

Justice, told the legislative council committee of yet another problem, which is that the Crime Information Bureau also contains information which is often in conflict with what is maintained under CCAP. The CIB has information on everybody whose fingerprints have been sent to it after an arrest. At least some sheriffs routinely fingerprint everybody they arrest and send all those fingerprints in to the CIB. There is a process for a record at the CIB to be destroyed when a case is dismissed, but the record will still exist on CCAP. Section 165.84 of the statutes provides that "any person arrested or taken into custody and subsequently released without charge, or cleared of the offense through court proceedings, shall have any fingerprint record taken in conjunction therewith returned upon request."

Roberts indicated that the legislative council committee may want to reconcile these two contradictory systems, to the extent the committee can.

III. Maintaining the Records on CCAP After Charges Have Been Dropped is Inconsistent with Our Legal Principle that a Person is Innocent until Proven Guilty.

One of the fundamentals of our society is that a person is presumed innocent until proven guilty. That is not just a criminal law concept. It is a notion in our civil society as well. We ought not to be held accountable for something we did not do. A ***presumption*** of innocence is not "maybe he did do it, maybe he didn't". It's the law. A person ***is*** innocent, until he is proven to be guilty. The reason that your name or our names are not in CCAP for having done something wrong is that we are innocent. The same applies to a person whose charges have been dropped. The person is innocent.

IV. Explanatory Information on CCAP is Insufficient

Some will say that, well if you read the record on CCAP you will find out that the charges were dismissed. There are several answers to this: (1) few people read the text; (2) few people understand the text; (3) the text will probably not really tell you what happened; and (4) people who do read the text will think the person got off on a technicality, but ***the person really did commit the act.***

V. Section 111.31 Prohibits an Employer from Asking About an Arrest Record, for the Same Reason – a Person is Innocent Until Proven Guilty

S. 111.31 and the administrative rules make it illegal for an employer to ***ask about an arrest record***, unless the charge on the arrest is still pending. Several states have the same restrictions. Why? Because a person is presumed to be innocent until proven guilty.

False arrests probably may come from sloppy police work. But they could come from deliberate falsification too – especially in cases that have obtained some celebrity, or in cases where other motives exist for the police.

VI. Records of Eviction Cases Should Also be Removed from CCAP, Where Cases Have Been Dismissed or Judgments Vacated.

As the Director of State Courts indicated in his presentation to the legislative council committee, CCAP records have also widely grown to be used by landlords, to find out about eviction records. Of course, this would be of interest to landlords. But what if the eviction action was mistaken or driven by some other motivation, such as that the landlord wanted to get rid of a tenant so he or she could rent to somebody else?

While there is no presumption of innocence for civil cases, where cases are dropped, the same questions arise. One might say that there is an even greater justification for removing these from CCAP, because, unlike criminal cases and municipal forfeiture cases, ***any individual can file a civil case for any reason.*** At least in the case of criminal and municipal forfeitures, there is an elected or appointed official authority involved in the commencement of the case.

False records have a seriously detrimental effect on tenants. And, as in the case of employment, there is a serious interest at stake. In this case, it is housing.

So, we would respectfully request the committee to consider amending SB 458 to require the removal of records from CCAP of eviction cases, where the cases have been dismissed or judgements of eviction have been vacated.

PETER D. FOX
WNA Executive Director
Peter.Fox@WNAnews.com

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February 20, 2008

State Senator Tim Carpenter
Chair, Senate Committee on Public Health, Senior Issues, Long-Term Care and Privacy
Room 306 South, State Capitol
PO Box 7882
Madison, WI 53707-7882

Dear Senator Carpenter and Members of the Committee:

On behalf of the Board of Directors of the Wisconsin Newspaper Association (WNA) and its 241 daily and weekly member newspapers, we appreciate the opportunity to express our concerns regarding 2008 Senate Bill 458. Our association strongly opposes this bill because of the damage it would do to the integrity of Wisconsin's court records. Essentially, it would create a "second set of books" thereby the state Circuit Court Assess Program – known popularly as C-CAP – ineffective.

Wisconsin provides greater access to its citizens through the public records portion of the Consolidate Court Automation Programs, popularly known as CCAP, than any other state in the union. This is in keeping with our state's proud tradition of open government and open records as enhanced by Legislative action over Wisconsin's history. We shouldn't take this commitment lightly.

Court records are public records and should be accessed in their entirety in whatever format – in manila folders in courthouse file cabinets or via the Web-based CCAP structure. In fact, delving a bit deeper into the matter, we would find computer-based record keeping is now normal procedure in our county courthouses. How much better it is to have a complete, historical record that shows a charge has been dismissed or found not guilty rather than have a charge appear on the CCAP Website and then suddenly disappear without explanation?

There is valid reason for the public to be aware of patterns of behavior even if a charge is dismissed, or reduced or if a party is found not guilty. A pattern may indicate a tendency to be involved in a particular behavior – multiple drunken driving charges come to mind.

SB 458 also invites a dangerous precedent – what is the next portion of court history that is too sensitive to be available to the public via CCAP?

SB 458 and its Assembly companion would create confusion and uncertainty among those citizens accessing the CCAP site because one would never know whether the information being viewed is complete or incomplete. Public confidence in completeness and accuracy of state court records would be damaged.

The CCAP oversight committee that met from mid-2005 to early 2006 to review the 10-year history of the program spent much time on this subject. The committee was comprised of judges, attorneys, law enforcement officials, citizens, news media representatives and legislators. The subject of what material should be placed on the site was closely examined. At the end of the committee's work over nine months there was consensus that accuracy and integrity were essential to public confidence in the service CCAP provides citizens.

The legislative "fix" as proposed via SB 458 will create its own set of problems. Representing WNA, I served on the accuracy and retention subcommittee of the oversight committee. Many who support SB 458 and Assembly Bill 754 complain that information displayed about dismissed charges or not guilty dispositions is incomplete or imprecise. If so, then let's improve the situation through a mechanism already in place that is able to appropriately address the many finer details of such issues. For example, it may be that an individual who is unquestionably shown to be wrongly charged with a crime as a result of identify theft ought not to have his or her name displayed in connection with that error.

In summary, we believe that SB 458 is flawed and would be a disservice to Wisconsin citizens. We strongly urge this committee to reject it. Thank you.

Sincerely,

Peter D. Fox
Executive Director